

MINUTES
BOARD OF ADJUSTMENT
PUBLIC HEARING
APRIL 13, 2006

The Lake County Board of Adjustment met Thursday, April 13, 2006 in the Commission Chambers on the second floor of the Round Administration Building in Tavares, Florida to consider requests for variances and any other petitions that may be submitted in accordance with Chapter XIV of the Lake County Land Development Regulations.

Board Members Present:

Howard (Bob) Fox, Jr.
Darren Eslinger
Henry Wolsmann, Vice Chairman
Ruth Gray
Mary Link Bennett
Donald Schreiner, Chairman
Carl Ludecke

Staff Present:

Terrie Diesbourg, Director, Customer Services Division
Anita Greiner, Senior Planner, Customer Services Division
Sherie Ross, Public Hearing Coordinator, Planning and Development Services Division
Melanie Marsh, Deputy County Attorney

Chairman Schreiner called the meeting to order at 1:00 p.m. He confirmed Proof of Publication for each case as shown on the monitor. He stated that all letters, petitions, photographs, and other materials presented at this meeting by applicants and those in support or opposition must be submitted to staff prior to proceeding to the next case. If a variance is approved and conditions are included in the approval, he asked that the owner/applicant ensure that all conditions are met before calling for an inspection. Otherwise, it could result in additional time and money. He added that if a variance is approved, the owner/applicant should give staff at least 24 hours before proceeding to the zoning counter.

Anita Greiner, Senior Planner, stated that a 30-day continuance has been requested for Agenda No. 13, BOA#46-06-5.

Chairman Schreiner explained the procedure for hearing cases on the consent agenda.

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Minutes

MOTION by Mary Link Bennett, SECONDED by Ruth Gray to approve the March 9, 2006 Board of Adjustment Public Hearing minutes, as submitted.

FOR: Fox, Eslinger, Wolsmann, Gray, Bennett, Schreiner, Ludecke

AGAINST: None

MOTION CARRIED: 7-0

CASE NO.: BOA#46-06-5**AGENDA NO.: 13****OWNER: Herman Lasater**
APPLICANT: Sharon Farrell, Land Use Associates

Anita Greiner, Senior Planner, stated that there has been a 30-day continuance request until May 11, 2006 for this case.

Steven J. Richey was present to represent the case. He said he was retained later in this process. He is requesting this continuance so he can meet with staff to discuss the differences as reflected in the staff report. He felt they should be able to make some progress in that regard in 30 days. This time will also give him an opportunity to meet with any neighbors who may have concerns.

Tom Seng said he was opposed to this continuance request as it would create a hardship for him because he would have to come back for another meeting.

When Ruth Gray asked if he had a commitment for May 11, Mr. Seng said he did not have a commitment at this time; but it would be a hardship to come to another meeting. He had taken time off from his job to come to this meeting.

Melanie Marsh, Deputy County Attorney, said it is at the discretion of the Board whether to grant this continuance or not. If this Board is not inclined to grant a continuance, Mr. Richey said he would withdraw the case and reapply to come back in 60 days. He was not prepared to proceed with the case today.

MOTION by Carl Ludecke, SECONDED by Mary Link Bennett to grant a 30-day continuance request for BOA#46-06-5 until the May 11, 2006 Board of Adjustment Public Hearing.

FOR: Fox, Eslinger, Gray, Bennett, Schreiner, Ludecke**AGAINST: Wolsmann****MOTION CARRIED: 6-1**

CASE NO.: BOA#16-06-3
OWNERS/APPLICANTS: James A. and Marion Moore

AGENDA NO.: 1

CASE NO.: BOA#45-06-2
OWNER/APPLICANT: James Weis

AGENDA NO.: 12

There was no one in the audience who wished to comment on the withdrawal of either BOA#16-06-3 or BOA#45-06-2.

MOTION by Mary Link Bennett, SECONDED by Darren Eslinger to accept the withdrawal of BOA#16-06-3 and BOA#45-06-2.

FOR: Fox, Eslinger, Wolsmann, Gray, Bennett, Schreiner, Ludecke

AGAINST: None

MOTION CARRIED: 7-0

CASE NO.: BOA#41-06-5 AGENDA NO.: 8

**OWNERS/APPLICANT: Terry and Pamela Wireman
Terry Wireman**

There was no one in the audience who wished to speak on this 30-day continuance.

MOTION by Mary Link Bennett, SECONDED by Ruth Bennett to grant the 30-day continuance request for BOA#41-06-5 until the May 11, 2006 Board of Adjustment Public Hearing and to place it first on the agenda.

FOR: Fox, Eslinger, Wolsmann, Gray, Bennett, Schreiner, Ludecke

AGAINST: None

MOTION CARRIED: 7-0

Discussion of Consent Agenda

Ruth Gray asked that the following cases be removed from the consent agenda and placed on the regular agenda: BOA#43-06-4, BOA#44-06-2, and BOA#48-06-1. Bob Fox asked that BOA#47-06-5 be removed from the consent agenda and added to the regular agenda. There was no one on the Board nor anyone in the audience who had an objection to the following cases remaining on the consent agenda: BOA#37-06-1, BOA#38-06-4, BOA#39-06-2, and BOA#49-06-1.

CASE NO.:	BOA#37-06-1	AGENDA NO.:	4
OWNERS:	John W. Davis III and Shannon R. Davis		
APPLICANT:	Walker Pools, Inc. (Wendy Baron)		
CASE NO.:	BOA#38-06-4	AGENDA NO.:	5
OWNER/APPLICANT:	Daniel J. Charles		
CASE NO.:	BOA#39-06-2	AGENDA NO.:	6
OWNERS:	Roderick L. and Julie G. Trusty		
APPLICANT:	Roderick L. Trusty		
CASE NO.:	BOA#49-06-1	AGENDA NO.:	16
OWNERS/APPLICANTS:	Timothy and Annette Balliett		

MOTION by Henry Wolsmann, SECONDED by Ruth Gray to take the following actions on the above consent agenda:

BOA#37-06-1	Approval
BOA#38-06-4	Approval
BOA#39-06-2	Approval with one condition
BOA#49-06-1	Approval

FOR: **Fox, Eslinger, Wolsmann, Gray, Bennett, Schreiner, Ludecke**

AGAINST: **None**

MOTION CARRIED: 7-0

CASE NO.:

BOA#35-06-5

AGENDA NO.:

2

OWNER/APPLICANT:

Susan Pillow

Anita Greiner, Senior Planner, presented the case and staff recommendation of denial. She showed the aerial from the staff report on the monitor.

When Ruth Gray asked if a minor lot split could be requested, Ms. Greiner said that would not be possible in this case because the zoning is Agriculture in the Rural land use designation, which requires a density of one house per five acres. Ms. Pillow's entire property is five acres; she wants to split out 1.25 acres for her daughter. Mary Link Bennett asked if the 3.5 acres that Ms. Pillow wants to sell could be split further. Ms. Greiner replied that if the property remains Agriculture with a Rural land use designation, the only lot split that could be done is the family density exception. That would require one acre of uplands.

Susan Pillow was present to represent the case. She reiterated that her husband had died suddenly in the middle of this process. They had already expended a considerable amount of money. She submitted a map as Applicant Exhibit A, explaining that this five-acre parcel has already been split into four parcels. They never planned to sell the property as individual parcels and removed that process so they would not receive four tax bills. They chose the 1.25 acres for their daughter since there was already a legal description for a parcel of that size. When Donald Schreiner asked if those splits are still valid, Ms. Greiner said there are no lots of record for those parcels.

Carl Ludecke was informed by Ms. Pillow that when she sells her house, she will probably go to an adult mobile home community in Tavares. She would like to stay in her home as long as possible, but she did not think she had enough money to stay there for the required five-year retention period.

In response to Darren Eslinger, Ms. Greiner said Ms. Pillow has gone through the preliminary review. She may have obtained surveys for the property, but Ms. Greiner was not aware of that.

Jennifer Wright stated that they have met all the conditions with the exception of the title work. However, she has not submitted anything because she had planned on submitting everything at the same time. The survey was the last piece she had completed. The survey was in process before her stepfather passed away, but it was finalized after his death. In response to Mr. Eslinger, Ms. Wright said they have explored other options; but they could not afford them. She said they had hired a contractor to build a house on the newly created lot, but they had to cancel that. Mr. Eslinger confirmed with Ms. Pillow that she would be able to maintain the house for a year.

MOTION by Darren Eslinger, SECONDED by Mary Link Bennett to approve the variance request in BOA#35-06-5 with the condition that all preliminary requirements be fulfilled including a certificate of occupancy being obtained within one year of today's date. Upon receipt of that certificate, the five-year retention period for the parent parcel only would be waived.

In response to Mr. Ludecke, Ms. Greiner said the recorded deed restrictions would not allow the daughter to sell her property within the five-year retention period. Mr. Ludecke felt that it should be possible to obtain a certificate of occupancy within one year. He agreed that the above condition is an appropriate condition in order to have the five-year retention period requirement waived.

FOR:

Fox, Eslinger, Wolsmann, Gray, Bennett, Schreiner, Ludecke

AGAINST:

None

MOTION CARRIED: 7-0

CASE NO.: BOA#36-06-3

AGENDA NO.: 3

OWNERS: Torrance and Denise Small
APPLICANT: Suriel Perez, Kicoh Tech., Inc.

Anita Greiner, Senior Planner, presented the case and staff recommendation of approval with one condition. She showed the aerial and map from the staff report on the monitor. She submitted a flood zone map as County Exhibit A and a wetlands map as County Exhibit B. She said this case was placed on the regular agenda because a letter was received from an adjacent property owner. That letter is included in the backup material.

Regarding the letter from Roger Fox, Ms. Greiner said his suggestions could be put in deed restrictions. Melanie Marsh, Deputy County Attorney, said the only conditions that this Board can impose on this variance would be ones that would make the variance meet the intent of the Code. She did not feel the suggestions made by the letter writer would have anything to do with meeting the intent of the Code.

Suriel Perez was present to represent the case.

There was no one in the audience who wanted to discuss this case.

MOTION by Ruth Gray, SECONDED by Mary Link Bennett to approve the variance request in BOA#36-06-3 with the condition that the three lots being created cannot be split further by utilizing the minor lot split process or family density exception.

FOR: Fox, Eslinger, Wolsmann, Gray, Bennett, Schreiner, Ludecke

AGAINST: None

MOTION CARRIED: 7-0

CASE NO.:

BOA#40-06-3

AGENDA NO.:

7

OWNERS/APPLICANTS:

Thomas & Jennifer Biemann

Anita Greiner, Senior Planner, presented the case and staff recommendation of approval with one condition. She showed the aerial from the staff report on the monitor and noted the letter of opposition that had been received. She submitted an aerial (County Exhibit A) showing the property owned by the letter writer. Darren Eslinger commented that it would have been better if this letter was written when the original family density exception application had been submitted; it does not really apply at this time.

In response to Ruth Gray, Melanie Marsh, Deputy County Attorney, said the owners/applicants could reapply for the family density exception.

Ms. Greiner submitted the lot split survey as County Exhibit B.

Mary Link Bennett was informed by Ms. Greiner that the Biemanns would not have to pay the fees for the family density exception again if this variance is granted.

Mr. Eslinger questioned whether six months is sufficient time to construct the home and obtain a certificate of occupancy. Ms. Greiner said that is the condition she recommended, but this Board could change that.

At the request of Ms. Gray, Jenny Biemann, one of the owners/applicants, gave more detailed information about their hardship. She said they are in the process of refinancing the house and have hired a contractor. She requested that they be given one year to complete the house and obtain a certificate of occupancy rather than six months as hurricane season is approaching.

There was no one in the audience who wished to speak on this case.

MOTION by Carl Ludecke, seconded by Mary Link Bennett to approve the variance request in BOA#40-06-3 to allow an extension of the time requirement to complete their family density exception and receive a certificate of occupancy on their home until one year from today's date (April 13, 2006).

FOR:

Fox, Eslinger, Wolsmann, Gray, Bennett, Schreiner, Ludecke

AGAINST:

None

MOTION CARRIED: 7-0

CASE NO.: BOA#42-06-5

AGENDA NO.: 9

OWNERS: Randall and Carol Suggs
APPLICANT: Land Use Associates, LLC

Anita Greiner, Senior Planner, presented the case and staff recommendation of approval with conditions. She showed the aerial from the staff report on the monitor and submitted a sketch as County Exhibit A. She noted the letter of opposition that had been received.

Carl Ludecke asked why the house was not placed closer to the road. Sharon Farrell, applicant for the case, said she would have to assume the owners met the front yard setbacks; she was not involved with the clients when the house was being built. The house is close to completion now. She said they would provide the certification for the pool to Public Works. No pool cage is planned. When Henry Wolsmann asked how far the pool would be from the house, Ms. Farrell said it would be about 15 to 20 feet. Ms. Greiner showed the site plan from the staff report on the monitor. Ms. Farrell stated that all the storm water runoff would remain on the site.

Melanie Marsh, Deputy County Attorney, stated that the house has already been permitted so it would not be a factor in making a determination on this variance request.

Ruth Gray confirmed with Ms. Greiner that the calculations and plan would create a better situation than is there currently.

There was no one in the audience who wished to speak.

MOTION by Ruth Gray, seconded by Mary Link Bennett to approve the variance request in BOA#42-06-5 with the following conditions:

The storm water plan must be constructed as indicated on the plans that were submitted and must be inspected by the Lake County Customer Services Division prior to a final inspection of the pool by the Lake County Building Division.

The owners and subsequent owner(s) shall be required to maintain the storm water plan as approved.

The owners are required to submit, prior to the zoning clearance being issued, certification (with supporting technical data) by a registered professional engineer providing demonstration that the encroachments shall not result in any increase in flood elevations during occurrence of the base flood discharge and that the flood-carrying capacity of the floodway is not reduced.

At the request of Ms. Bennett, Ms. Greiner said she would respond to the writers of the letter of opposition informing them that the variance was approved and the conditions that were placed on the variance. Ms. Bennett would like to include in the letter that this variance with conditions would improve the situation.

FOR: Fox, Eslinger, Wolsmann, Gray, Bennett, Schreiner, Ludecke

AGAINST: None

MOTION CARRIED: 7-0

CASE NO.: BOA#43-06-4

AGENDA NO.: 10

OWNERS: Stephen N. and Jacqueline Baker &
Joe B. and Joann S. Baker

APPLICANT: Sharon Farrell, Land Use Associates

Anita Greiner, Senior Planner, presented the case and staff recommendation of approval with one condition. She showed the aerial and site plan from the staff report on the monitor. She submitted a flood zone map as County Exhibit A and a wetlands map as County Exhibit B. She noted the size of the adjacent lots on the wetlands map. The lots in the area are rather large as are the proposed lots. She pointed out that Webbs Way is in a condition that would allow easy access for emergency vehicles.

Ruth Gray said she had asked for this case to be removed from the consent agenda because she questioned the hardship or unfairness. Darren Eslinger also questioned that.

Bruce Duncan of Potter Clement Lowry & Duncan was present to represent the case. He said the hardship is that to plat this property would not be cost effective for three lots. If they plat this property, they would need to create nine lots. They felt that what they want to do is more compatible with what already exists. He submitted a map as Applicant Exhibit A. He reiterated that Webbs Way is a 66-foot wide private easement that comes off of a County-maintained paved right-of-way through a subdivision. Paving would not be a good idea in the Wekiva area so they are seeking the ability to split this parcel off a non-paved easement. Even if this variance is granted, Ms. Gray said there is nothing to stop the owners from splitting this into more than three lots. Donald Schreiner said the recommended condition would not allow further splits than the three lots. The required recorded deed restrictions for the maintenance of the easement could also include a restriction on any further lot splits. The owners will develop two of the lots. The third lot would either be kept or sold.

Mr. Eslinger noted that the staff condition would not prohibit the lots being rejoined and then platted into nine separate parcels. Mr. Duncan said he had no problem with that additional restriction as that is not the intent of the owners. Mr. Eslinger said he still did not see the hardship or unfairness especially since one of the parcels would be retained for future sale. Since this is not a family density exception, Mr. Schreiner said all three lots could be sold.

At the request of Ms. Gray, Mr. Duncan gave some estimates for the cost of platting this property.

Ms. Greiner pointed out that hardship in the Land Development Regulations (LDRs) refers to an economic hardship as one possible hardship. Mr. Duncan has said that splitting this parcel through the platting process would be an economic hardship. Ms. Greiner added that the owners of the parcel do not own the easement going to their parcel. She did not know if they could pave it. Mr. Duncan said they have a right to the easement. Mr. Eslinger said he was considering the hardship of only splitting this into two parcels as is allowed by Code versus three parcels, not nine parcels. Mr. Duncan added that the economics of what the owners paid for the property is part of the hardship. They closed on the property six months ago. Mr. Eslinger stated that it appears that the owners bought the property with the intent of subdividing and selling to recuperate some of the cost. Mr. Duncan said they bought with the intent of having two houses for the father and son and either keeping the third lot for the daughter or selling it. Ms. Greiner added that one of the proposed 14-acre parcels already has a house for the father. The other 14-acre parcel would be for the son.

When Mr. Eslinger said he still did not see a hardship other than that of a self-imposed hardship of land speculation, Carl Ludecke felt the hardship was the burden of going through the platting process when this Board has approved this type of situation in the past for lands bought years ago; he did not feel length of time was an issue. Mr. Eslinger said Mr. Ludecke's statement makes it sound like this Board has set a precedence, and he did not feel that is so.

There was no one in the audience who wished to speak on this case.

CASE NO.:	BOA#43-06-4	AGENDA NO.:	10
OWNERS:	Stephen N. and Jacqueline Baker & Joe B. and Joann S. Baker	PAGE NO.:	2
APPLICANT:	Sharon Farrell, Land Use Associates		

MOTION by Carl Ludecke, seconded by Mary Link Bennett to approve the variance request in BOA#43-06-4 with the condition that the three lots being created cannot be split further utilizing the family density exception or the minor lot spit process.

Ms. Gray said she would like the condition to read that no further lot splits would be allowed through any process. Ms. Greiner said the applicant did state that he would be agreeable to adding that condition.

AMENDMENT by Carl Ludecke, seconded by Mary Link Bennett to prohibit the three lots being created from being split further utilizing any process.

FOR: Fox, Wolsmann, Bennett, Schreiner, Ludecke

AGAINST: Eslinger, Gray

MOTION CARRIED: 5-2

CASE NO.: BOA#44-06-2

AGENDA NO.: 11

OWNERS: Hung Van and Lynn Nguyen
APPLICANT: Thomas D. Kelley

Anita Greiner, Senior Planner, presented the case and staff recommendation of approval with conditions. She showed the aerial from the staff report on the monitor, noting that there is a house on the parcel. She submitted a survey as County Exhibit A.

Ruth Gray stated that she was the Board member who asked to have this case taken off the consent agenda and placed on the regular agenda because she questioned the hardship. The owners purchased this property in 2003, and now there is a complaint that they can't use the backyard. That should have been considered before the house was purchased.

There was no one present to represent the case.

Darren Eslinger commented that the pool could fit on the property without encroaching on the jurisdictional wetland line if the pool was shifted off center.

Ms. Gray was informed by Ms. Greiner that there are other houses in the area. Mr. Eslinger said this is a fast-growing subdivision.

When Ms. Gray asked about the hardship, Mr. Eslinger said this is in a subdivision, and the owners probably relied on the builder's word and the real estate agent's word that there would not be a problem with adding a pool in the backyard.

Henry Wolsmann was concerned about setting precedence, but Donald Schreiner stated that each case is judged on its own merits.

There was no one in the audience who wished to speak on the case.

MOTION by Carl Ludecke, seconded by Mary Link Bennett to approve the variance request in BOA#44-06-2 with the following conditions:

The storm water plan must be constructed as indicated on the plans that were submitted and must be inspected by the Lake County Customer Services Division prior to a final inspection of the pool by the Lake County Building Division.

The owners and subsequent owner(s) shall be required to maintain the storm water plan as approved.

FOR: Fox, Eslinger, Bennett, Schreiner, Ludecke

AGAINST: Wolsmann, Gray

MOTION CARRIED: 5-2

CASE NO.:**BOA#47-06-5****AGEND NO.:****14****OWNERS/APPLICANTS:****Timothy and Susan Burke**

Anita Greiner, Senior Planner, presented the case and staff recommendation of approval. She showed the aerial from the staff report on the monitor.

Donald Schreiner noted that Bob Fox had asked that this case be removed from the consent agenda.

Mr. Fox referred to a statement in the analysis on Page 2 regarding the recordation of a document requiring the principal structure and accessory dwelling unit to remain in the same ownership. When he questioned whether this should be a condition of the variance, Ms. Greiner stated that it is a requirement.

There was no one in the audience who wished to speak on the case.

MOTION by Ruth Gray, seconded by Mary Link Bennett to approve the variance request in BOA#47-06-5.

FOR:**Fox, Eslinger, Wolsmann, Gray, Bennett, Schreiner, Ludecke****AGAINST:****None****MOTION CARRIED: 7-0**

CASE NO:

BOA#48-06-1

AGENDA NO.:

15

OWNERS/APPLICANTS:

**Arnco Const. Inc. (George W.
Arnold) & Ricky and Sheila
McIntyre**

Anita Greiner, Senior Planner, presented the case and staff recommendation of approval. She showed the aerial from the staff report on the monitor and submitted a wetlands map as County Exhibit A and a flood zones map as County Exhibit B.

In response to Ruth Gray, Ms. Greiner said the survey is dated July 7, 2005. The survey shows the property as separate individual lots. Mr. Arnold purchased the lots on July 19, 2005. If Mr. Arnold had done a title search, Ms. Gray said that should have shown that these were not single lots. Melanie Marsh, Deputy County Attorney, replied that a title search would show them as separate lots if they were platted or otherwise done through a lot split. When Ms. Gray said that when Mr. Arnold bought the property there were not four separate lots, Ms. Marsh said she did not know what Mr. Arnold knew when he bought the property. Ms. Greiner was informed by Ms. Marsh that if the property was platted or an administrative lot split was done, a title search would show that. She added that title policies except out zoning issues so if the property was subdivided and recognized by the County in some other manner, that would not necessarily be picked up on the title search; and the title policy issuer would not be responsible to their client at all since they except out zoning issues. In response to Mary Link Bennett, Ms. Greiner said the County's zoning map shows the property as one parcel.

George W. Arnold of Arnco Construction stated that the property was represented to him by the owner as four individual lots. The previous owners are present to attest to that fact. In addition, the company was presented a certified survey to the previous owner from Mr. Shehan, a local surveyor. Mr. Arnold contacted the surveyor and asked him to update and certify the surveys to Arnco Construction and the title company, which he did. Mr. Shehan provided the company with certified surveys, which match the original surveys that Mr. Lockwin presented. Mr. Ludecke said Mr. Arnold should have verified that information. Ms. Bennett agreed.

Mr. Arnold stated that the County issued them a building permit. The Property Appraiser's Office has four parcel numbers for this piece of property. Mr. Ludecke said that does not mean that they are buildable sites.

In response to Mr. Eslinger, Ms. Greiner said the building permit was issued on an individual one-acre parcel on February 24, 2006.

Mr. Schreiner was informed by Mr. Arnold that a roof has been placed on the house for which the building permit was issued. Mr. Arnold said they bought this at honest face value from a grass roots family, thinking that they had done everything absolutely correct. They asked for a survey, and a title was issued. There was no cloud on the title. Two titles were issued for the whole piece of property.

Mr. Eslinger asked the County's responses to these circumstances. Ms. Greiner said the County put a hold on the certificate of occupancy until the lot is recognized. In response to Henry Wolsmann, Ms. Greiner said the County has recognized their mistake. A zoning clearance was issued in error at the Zoning counter for the one-acre parcel to the north.

Mr. Arnold stated that they did check the zoning. The zoning requirement is one unit per acre. The proposed use meets all the criteria of the zoning including the access to the public road that is maintained by Lake County.

At the request of Ms. Gray, Ms. Marsh reiterated that a standard exception to title insurance is that it excludes any zoning restrictions or other issues regarding how the government recognizes the lot. Title insurance is issued on the legal description provided to the issuer. Based on that legal description, the issuer then determines if there are any encumbrances on the property to insure it. Title insurance will only

CASE NO:	BOA#48-06-1	AGENDA NO.:	15
OWNERS/APPLICANTS:	Arnco Const. Inc. (George W. Arnold) & Ricky and Sheila McIntyre	PAGE NO.:	2

pick up what is recorded in the public records. Ms. Greiner placed the survey from the staff report on the monitor. Ms. Marsh referred to the following statements on the survey: "11. Survey was based on information furnished by client" and 8. This survey is subject to any facts that may be disclosed by a full and accurate title search." Therefore, this survey was not drawn based upon public records. It was drawn upon information provided to the surveyor by the client.

Marlin Kilpatrick, first owner of the subject property and adjacent property owner, said he had never talked to Mr. Arnold until today. In 1980 Mr. Kilpatrick said he purchased this property as a five-acre block. In the latter part of 2003, he had a lot line deviation done and the lots were platted. This was recorded at the courthouse. Ms. Greiner stated that her information shows a lot line deviation but nothing further. Mr. Kilpatrick said he does not have proof of the platting with him. In response to Mr. Ludecke, Mr. Kilpatrick said he had gone through the Zoning and Planning Departments to create four sites. It is registered as Sandy Acres Estates. This was accomplished in late 2003 or early 2004. Having done that, he put up a sign to sell the property. Mr. Lockwin, his neighbor, purchased the property from him with a contractual agreement between the two of them. Mr. Lockwin bought the first lot, paid for it, and P. B. Howell, an attorney in Leesburg, recorded it. This is the lot where the house is being built. The agreement he had with Mr. Lockwin was that he would purchase one lot a year for four years. Mr. Lockwin asked Mr. Kilpatrick if he had any objection to selling the other three lots to Mr. Arnold. Mr. Kilpatrick told Mr. Lockwin that he did not have a problem with that so the lots were sold to Mr. Arnold.

When Mr. Eslinger asked if the other three lots were ever titled to Mr. Lockwin, Mr. Kilpatrick said they were not.

Ms. Greiner confirmed with Mr. Kilpatrick that this property was platted as a small subdivision. Mr. Kilpatrick said he went through the Development Review Staff (DRS) process and paid to have a plat done on the parcel. Ms. Marsh said she just checked the public records of Lake County, and there is no plat reflecting the name of Sandy Acres Estates. Mr. Kilpatrick said he was told that the people who waited on him in Zoning recorded it. He paid for it to be recorded. Ms. Greiner said the records show a lot line deviation in 2003. A fee would have paid for that, and it would have been recorded. However, it would only have moved a line around; it would not have created the other lots. She submitted a zoning map as County Exhibit C, pointing out the line that was moved based on the lot line deviation. When Mr. Kilpatrick said he has the paperwork at home, Mr. Schreiner said this could be continued until that paperwork is submitted to staff. Ms. Marsh said that could be done.

MOTION by Carl Ludecke, seconded by Henry Wolsmann to continue BOA#48-06-1 until the May 11, 2006 Board of Adjustment public hearing and to place it as No. 2 on the agenda.

FOR: Fox, Eslinger, Wolsmann, Gray, Bennett, Schreiner, Ludecke

AGAINST: None

MOTION CARRIED: 7-0

Mr. Arnold said he has contracts in place and the houses should have been started two months ago. He is going to lose those contracts. He bought this property in good faith. He felt this request meets all the criteria to be approved even though there appears to be a question of whether the process was ever completed.

Mr. Ludecke felt the Board needs to know all the facts before making a decision. With the facts that are before the Board at this time, Mr. Schreiner said the Board would probably deny the request. Mr. Arnold

CASE NO:	BOA#48-06-1	AGENDA NO.:	15
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reiterated that this request meets all the criteria to have a variance granted. If there is a title issue, that would fall back on him, not the County. Mr. Ludecke said these issues must be worked out before proceeding further.

Ms. Marsh said she had just been given a file in which a preliminary plat was applied for in 2004. However, the process was not completed so no final plat was ever approved.

Mr. Arnold asked the Board to hear from Mr. Lockwin as he felt Mr. Lockwin would confirm his side of this problem.

When Mr. Schreiner asked if the Board would like to reopen the case, Ms. Gray said she would like to hear more information.

Mr. Kilpatrick said Scott Kearney, a former County employee, had told him that everything had been recorded and settled and had sent him the papers. He paid all the fees that he was told to pay.

Ms. Marsh stated that the last dated memo in the file from Scott Kearney was dated February 18, 2004 and stated that the preliminary plat was scheduled for DRS on March 4, 2004. None of the surveys submitted have been stamped with DRS approval. Even if the preliminary plat was approved but was not in the file, in order for these lots to be legally subdivided, a final plat would have been approved by the Board of County Commissioners (BCC).

Mr. Kilpatrick said Mr. Kearney had told him that he could sell the lots because they were all platted. Mr. Eslinger asked Mr. Kilpatrick if he had documentation at home stating that platting was completed. Mr. Kilpatrick said he has the paperwork that Mr. Kearney sent him.

Ms. Gray felt they should stick with the motion to continue this case.

Mr. Arnold said Arnco Construction is a small company and needs to go forward. He did not create the problem, but he is the one who is being affected by it.

Ms. Greiner said County records show that Mr. Arnold owns a 4.5-acre parcel. One dwelling unit is permitted on that parcel. Ms. Eslinger suggested platting the property to create three one-acre parcels and one 1.5-acre parcel. Ms. Greiner said platting the property as a subdivision was the original intent but was never finished. The other option would be to get a variance from this Board to create the parcels through the minor lot split process. Mr. Arnold said he chose this second method as it was a simpler process per direction of staff. Mr. Eslinger said it appears that it would be unnecessary to plat this property because everything that is required for platting is already there.

In response to Mr. Ludecke, Ms. Greiner said the building permit was pulled on the legal description of a one-acre parcel.

Ms. Marsh said the applicants do not need a variance to have the County recognize the lot where the house is now because a minor lot split can be done for two parcels. However, Mr. Arnold wants to create four lots and is requesting a variance for that reason because he has contracts on what he believed were four one-acre parcels. Ms. Greiner said he would still need to go through the minor lot split process even if this variance is approved. If all the information that is needed has been submitted and is correct, the minor lot split process could take as little as 30 days.

When Mr. Eslinger was asked if Mr. Kilpatrick was made aware of the minor lot split option, Ms. Marsh

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said there is no reference to that in the preliminary plat file. Ms. Greiner said she had checked with Current Planning, and Current Planning did not have a problem with utilizing the minor lot split process in this case since all criteria could be met.

Mr. Eslinger felt this Board should dispense with the case at this public hearing. Ms. Gray agreed.

MOTION by Carl Ludecke, seconded by Henry Wolsmann to rescind the motion and second made to continue BOA#48-06-1 until the May 11, 2006 Board of Adjustment public hearing and to place it as No. 2 on the agenda.

FOR: Fox, Eslinger, Wolsmann, Gray, Bennett, Schreiner, Ludecke

AGAINST: None

MOTION CARRIED: 7-0

MOTION by Ruth Gray, seconded by Darren Eslinger to approve the variance request in BOA#48-06-1.

Mr. Ludecke said the only problem he had with this request is that Mr. Kilpatrick did not do what he was supposed to do. This is a way to circumvent the County's platting and variance regulations.

In this case, Mr. Eslinger said Ms. Greiner has pointed out that all the platting regulations could be met with the minor lot split.

Mr. Schreiner commented that we are all human and we all make mistakes. The applicants have come to this Board to correct those mistakes, and this Board has the power to do that.

Ms. Bennett was informed that if this variance is approved, the applicants would be required to go through the minor lot split process to create the four parcels.

In response to Ruth Gray, Ms. Greiner said the Customer Services Division put the hold on the certificate of occupancy.

FOR: Fox, Eslinger, Wolsmann, Gray, Bennett, Schreiner

AGAINST: Ludecke

MOTION CARRIED: 6-1

Ray Lockwin said he would like to apologize to Mr. Arnold for creating this situation.

Adjournment

There being no further business, the meeting was adjourned at 3:45 p.m.

Respectfully submitted,

Sherie Ross
Public Hearing Coordinator

Donald Schreiner
Chairman